



U.S. Department of Energy DIRECTIVES

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Document: DOE O 227.1A, Independent Oversight Program, Review and Comment

Overall Comments

Suggested comment from Carla Whitlock for Headquarters EM

No Comment

Suggested comment from Bill Schwartz for Headquarters HG

This package represents the official, consolidated comments of **Poli A. Marmolejos, Director**

No Comment

Major comment from Emily Mishoe for Headquarters NA

Included comments:

SME patrick.rhoads@nnsa.doe.gov

The Order implements P 226.1. Since there is already an Order 226.1, this Order should be numbered O 226.2 to be consistent with the approach for the DOE Directives System in DOE O 251.1.

Response:

Reject

Directive numbers are established by MA-90. The number of the directive has no bearing on the ability to implement the requirements contained therein.

Suggested comment from Emily Mishoe for Headquarters NA

Included comments:

Rochelle Russell for Kansas City Field Office

No Comment

SME barry.mellor@nnsa.doe.gov

No Comment

SME lloyd.deserisy@nnsa.doe.gov

No Comment

Ken West for NA-Acquisition and Project Management

No Comment

SME Andi.Kasarsky@nnsa.doe.gov

No Comment

SME marcia.shell@nnsa.doe.gov

No Comment

Mark Roman for NA-70 Defense Nuclear Security

Walter Cyganowski for Livermore Field Office

No Comment

SME frederick.bell@nnsa.doe.gov

No Comment

SME hwm@y12.doe.gov

No Comment

Linell Carter for Pantex - BWXT Pantex, LLC

No Comment

David Freshwater for NA-40 NNSA Emergency Operations

The Office of Emergency Operations (NA-40) has no comments on the subject directive.

Donna Barnette for NA-30 Naval Reactors

No Comment

Derek LaHouse for NA-Management and Budget

No Comment

Major comment from Cecelia Kenney for Headquarters AU

This package represents the official, consolidated comments of **Stephen A. Kirchhoff**

Overall (Clarity and Parallelism)–While the draft Order addresses the role of the DOE Directives OPI to provide “comment on the factual accuracy of draft appraisal reports” and to “provide clarification regarding requirements contained in DOE directives under their cognizance,” the OPI’s involvement in providing authoritative interpretations of the directives requirements for its cognizant subject areas needs to be more fully defined in both the “Responsibilities” and “Requirements” sections of the Order, particularly with respect to disagreements on policy related findings between the cognizant EA Office Director and the DOE manager of the element being appraised.

Rationale: Create parallelism between the implied OPI role from the “Responsibilities” section and a directly stated requirement. Although requirements paragraphs 4.d.(2) and 4.d.(3) on page 5 require that findings be based on applicable directives requirements and that disagreements about the findings be elevated through organizational management levels up to and including the Deputy Secretary for resolution, these paragraphs do not clearly call out that there is a requirement for the cognizant OPI to provide an authoritative interpretation of the directives requirement on which the finding is based, even though the “Responsibilities” section seems to suggest or imply that the OPI for the Directive should be included in the decision. Since this is an issue that has come up in the past, the Department should take this opportunity to clarify the requirement.

Recommendation: A few minor modifications to existing paragraphs are all that is needed to clarify the requirement for the cognizant OPI to provide an authoritative determination on directives requirements under its cognizance and to create parallelism between the “Responsibilities” and the “Requirements” sections. Page 5, Par. 4.d.(2); Page 5, Par. 4.d.(3); Page 6, Par. 4.e.(3); Page 10, Par. 5.h.(3); Pages 7-10, “Responsibilities” section

Response:

Accept with Modifications

See responses to comments on specific sections.

Suggested comment from Cecelia Kenney for Headquarters AU

This package represents the official, consolidated comments of **Stephen A. Kirchhoff**

the practice of including the silent "Environment" in the term "Safety and Security," as noted in the "Safety and security programs" in the Definitions section (Appendix 1). When you look on Page 2, paragraph 4.a(1) -- Requirements, Independent Oversight Activities: the examples of "safety" and "security" don't mention environment, although public health and environment are included on page 6 regarding imminent dangers or conditions (paragraph e(1)(a)). Although it is in the name of their second tier office and Director of the Office of Environment, Safety and Health Assessments has Responsibilities under paragraph 5.c; the subparagraphs 5.c.(1)- (5) don't explicitly mention "environment."

Response:

Reject

EA acknowledges this comment but notes that other areas, such as emergency management and cyber security, are also not generally referenced throughout the directive.

The term “risk” or “safety and security risks” should be defined.

Response:

Reject

There is no uniformly accepted definition of risk within the Department and it is not the role of EA to create policy. The term “risk” is included in this directive because Secretary Moniz charged EA to “analyze DOE operations for risk management and performance” (see the June 27, 2014, Secretarial memorandum) and because some programs

evaluated by EA, such as cyber security, are required to be implemented per DOE directives based on a risk management approach.

Suggested comment from Loretta Robinson for Headquarters HC

This package represents the official, consolidated comments of **N/A - Comment package automatically submitted.**

No Comment

Suggested comment from John Wall for Headquarters CF

This package represents the official, consolidated comments of **N/A - Comment package automatically submitted.**

No Comment

Suggested comment from Sharon Edge-Harley for Headquarters EA (Enterprise Assessment)

This package represents the official, consolidated comments of **William A. Eckroade, Deputy Director, Office of Enterprise Assessments**

No Comment

1. PURPOSE

Major comment from Dave Jensen for Bonneville Power Administration

BPA appreciates the opportunity to comment on draft DOE O 227.1A. BPA has an equivalent program that meets the requirements of this order. BPA's Safety Management Program and supporting procedures is designed to comply with ANSI Z10-2012 Safety Management System Standard and includes a robust internal and 3rd party oversight function that follows the intent of this order. This safety management system provides an equivalence to DOE's oversight responsibilities.

In addition BPA's relationship with its Prime Contractors is markedly different than the relationship DOE has with its Management and Operating contractors as defined in the Federal Acquisition Requirements Subpart 17.6-Management and Operating Contracts and as such BPA is exempt from the Contract Requirements Document (CRD) referenced in DOE O 227.1A, and any reference to "contractors" in the body of the order. BPA requires Prime Contractors to conduct their own internal independent oversight with additional contract oversight functions provided by BPA. With regard to BPA contractors, all requirements and expectations for both BPA and Prime Contractors are incorporated into the Bonneville Power Purchasing Instructions (BPPI) safety contract clauses.

RECOMMENDATION: Recommend that BPA be exempt from this DOE Order based upon our equivalent program.

Response:

Reject

All DOE sites are expected to have robust safety management systems in place. The existence of such programs does not preclude the application or utility of an independent oversight program to evaluate those programs as directed by the Secretary of Energy through the establishment and assigned mission of EA.

Suggested comment from Emily Mishoe for Headquarters NA

Included comments:

SME BURNINAG@NV.DOE.GOV

The purpose includes, "ensure that the Independent Oversight program is implemented in a transparent, efficient, and constructive manner to support the safe and secure accomplishment of DOE's mission. While the body of the order speaks to efficiency and alludes to transparency, it is unclear what is meant by "constructive manner" or how that is accomplished in the body of the order. Either ensure what "constructive manner" means and that the order addresses it, or use a more specific term as part of the purpose.

Response:

Reject

This sentence describes overarching management principles for implementing the Independent Oversight Program that were added at the request of senior managers in DOE.

SME BURNINAG@NV.DOE.GOV

Footnote 1 is redundant with the definition of safety and security programs provided in Appendix A. Recommend removing the footnote as it is redundant.

Response:

Reject

Agree with the comment about redundancy but have elected to retain the footnotes for ease of reference.

SME patrick.rhoads@nnsa.doe.gov

When citing P226.1B, suggest identifying it as " . . . Policy, dated 4-25-11 or successor documents."

Response:

Accept with Modifications

References to specific versions of directives have been removed throughout the directive.

Major comment from PK Niyogi for Headquarters NE

Page 1, Section 1: "and risk management" was added to the purpose of independent oversight activities such that the statement reads, "The Independent Oversight Program is designed to enhance DOE safety and security programs by providing the Secretary and....with an independent evaluation of the adequacy of DOE policy and requirements and the effectiveness of DOE contractor and line management performance and risk management in safety and security ... It is unclear how the Independent Oversight Program will evaluate the effectiveness of contractor risk management when the Department lacks a consistent and effective risk management practices/programs. Additionally, many risk management decisions occur at the Site Federal level or are approved by federal personnel or at the Headquarters level , again making it unclear how the efficacy of contractor risk management will be evaluated consistently across the Department. Additionally it is unclear how EA will independently assess policy or the implementation of this policy when the organization has and still is involved in the development/concurrence of policy and oversees the NTC which develops curriculum associated with implementing policy.

Response:

Reject

The Secretary of Energy's direction in establishing EA included the task to "analyze DOE operations for risk management" (see the June 27, 2014, Secretarial memorandum). In addition, some programs subject to EA independent oversight (e.g., cyber security) are required by directive to implement those programs based on a "risk management approach." Thus, inclusion of this term is appropriate in 227.1A. EA does not have a direct role in the development of policy. While EA has the opportunity to comment on directives in the same manner as all other DOE organizations, EA does not have a standing role on the Directives Review Board. Likewise, while the NTC develops curricula associated with implementing policy, it does not thereby create policy and its curricula are coordinated with the OPIs to ensure accurate communication of established requirements.

Suggested comment from Jennifer Kelley for Headquarters SC

It is very important for this Order, and any supporting guidance, to be completely consistent and aligned with the contractor assurance system across the complex. This is a fundamental precept of "Governance Reform", and it stats with the DOE, external independent oversight orders and requirements. This is a golden opportunity to help enable improved consistency across the complex.

Response:

Reject

This is not an actionable comment. This directive describes an Independent Oversight Program that may evaluate contractor assurance systems during its appraisals.

Suggested comment from Cecelia Kenney for Headquarters AU

Page 1, Footnote 1; Attachment 1, Page 1 Footnote 4; Appendix A, Page A-2, Definition "Safety and Security Programs" (clarity and consistency)–The two duplicate footnotes and their matching definition currently reference "sensitive and classified information in all forms." The wording should be changed to reflect either "sensitive unclassified" or "controlled unclassified

information.” Recommend “controlled unclassified information” for consistency with its use in par. 5.c.(5) of this directive.

Since “classified information” is “sensitive,” the intent seems to be to make a distinction between classified information and unclassified information that is still controlled. The wording needs to be clarified. We recommend “controlled unclassified information” with a corresponding definition added into Appendix A as follows: Controlled Unclassified Information-- An overarching term used to refer to unclassified information that is identified and marked as sensitive (e.g., Official Use Only and Unclassified Controlled Nuclear Information). Within DOE, CUI includes UCNI, OUO (which encompasses Personally Identifiable Information (PII), Export Controlled Information (ECI) and other unclassified sensitive information not governed by specific directives), and Unclassified Naval Nuclear Propulsion Information. CUI will also be used to describe information that will be identified and safeguarded under E.O. 13556, *Controlled Unclassified Information*, once it is implemented within DOE.

Response:

Accept with Modifications

Wording changed to “sensitive unclassified.”

2-3. CANCELLATION; APPLICABILITY

Suggested comment from Emily Mishoe for Headquarters NA

Included comments:

SME BURNINAG@NV.DOE.GOV

Capitalize "attachment 1" for consistency with the rest of the Order.

Response:

Reject

Attachment 1 is not used elsewhere in the order except as the header to the Contractor Requirements Document. It is not a proper noun and therefore does not warrant capitalization.

Suggested comment from Jennifer Kelley for Headquarters SC

Paragraph 3b. The CRD must be evaluated for inclusion in the contract, but it may be determined to not be applicable or it may be tailored per DEAR 970. 5204-2.

Response:

Reject

The wording of this section already states the CRD *or its requirements* must be included in the specified contracts. This is standard verbiage for the contractor applicability section that has been provided by the DOE Office of General Counsel.

Suggested comment from Cecelia Kenney for Headquarters AU

The draft currently references the DEAR clauses for Classification/Declassification (48 CFR 952.204-70) and Security (48 CFR 952.204-2). Should it also reference the DEAR Clause for Counterintelligence (970.5204-1)?

Rationale: Paragraph 4.a.(4) in the draft DOE O 227.1A calls out that one of the high priority areas for Independent Oversight appraisals includes special access programs and Sensitive Compartmented Information. Additionally, the Department’s classification Order (DOE O 475.2 B) identifies both the Classification/Declassification and the Counterintelligence DEAR clauses (Page 9, Par. 5.g.(1)).

Response:

Accept

Suggested change made.

4. REQUIREMENTS

Suggested comment from Emily Mishoe for Headquarters NA

Included comments:**Mark Roman for NA-70 Defense Nuclear Security**

This revision includes "projects" within the scope of EA activities. As projects are generally "in-process" activities, clarification of the EA role is advised.

Response:

Accept with Modifications

The term "projects" has been modified to read "nuclear design/construction projects" to be consistent with the responsibility assigned in DOE O 413.3B, *Program and Project Management for the Acquisition of Capital Assets*, Appendix B, item 11.h; and the requirement assigned to EA in section 304 of the Consolidated and Further Continuing Appropriations Act, 2015.

Major comment from PK Niyogi for Headquarters NE

Section 4 a. (1): Evaluation of "Projects" was added to EA Oversight activities. It is unclear what role and benefit the evaluation of projects by EA will provide the Department that current processes (DOE Order 413, CRAs, RAs, IPTs, etc..) and other oversight organizations (OECM, DNFSB) do not already provide. I recommend defining the role/subject areas of projects that will be reviewed and scope of oversight activities, conducting a cost/schedule analysis to understand the impact such reviews will have on projects and the added benefit to the Department or removing the term.

Section 4 a. (1): Evaluation of "Other Critical Areas" was added to EA Oversight activities. This is a broad term that could be interpreted multiple ways which may result in inconsistent execution of the program. It also introduces unnecessary vagueness to the order which should clearly identify the independent oversight program. I recommend defining what "Other Critical Areas" are or removing the term.

Response:

Accept with Modifications

The term "projects" has been modified to read "nuclear design/construction projects" to be consistent with the responsibility assigned in DOE O 413.3B, *Program and Project Management for the Acquisition of Capital Assets*, Appendix B, item 11.h; and the requirement assigned to EA in section 304 of the Consolidated and Further Continuing Appropriations Act, 2015.

The term "other critical areas" has been changed to "other critical functions" to be consistent with section 1 of this directive and the June 27, 2014, Secretarial memo establishing EA. The word "functions" was inadvertently changed to "areas" in this section. This EA role to evaluate other critical functions as directed by the Secretary is not new to this version of the directive.

Major comment from Jennifer Kelley for Headquarters SC

Paragraphs 4a(1), 4f(1), 5e(3), 6, and Attachment 1 Paragraph 5. Add the following reference to Paragraphs 4a(1), 4f(1), 5e(3), 6, and Attachment 1 Paragraph 5 of the Order: Memorandum from G.J. Malosh to W.F. Brinkman, dated May 6, 2010, SUBJECT: Approval of Equivalency for Department of Energy Order 226.1A, *Implementation of Department of Energy Oversight Policy Contractor Requirements Document*.

Response:

Reject

Section 4.a.(2) already states that EA must evaluate performance against requirements promulgated by Program Secretarial Officers and formally authorized for use by organizations under their cognizance. The inclusion of program-specific memoranda for all Departmental elements subject to the Independent Oversight Program described in this order is not appropriate.

Suggested comment from Cecelia Kenney for Headquarters AU

Add to the end of the first sentence "based upon DOE policy and associated consensus standards."

Response:
Reject

Paragraph adequately describes the basis for Independent Oversight appraisals. The suggested words do not provide needed clarification.

Major comment from Jennifer Kelley for Headquarters SC

Paragraph 4a(2). Revise the first sentence of paragraph 4a(2) as follows: "EA must evaluate performance and management of safety and security risks against applicable laws, statutes, rules, executive orders, national standards, DOE directives ~~invoked through the contract~~, DOE-approved plans and program documents (e.g., security plans, emergency plans, authorization basis documents, worker safety and health programs, quality assurance program plans), site-specific procedures, and contractual requirements."

Response:
Reject

The paragraph already states that EA must evaluate against applicable documents listed. If a DOE directive is not in a contract, it would not be applicable to that contract. Making the suggested change may also improperly limit EA assessments of DOE organizations, which are not bound by contracts.

Suggested comment from Jennifer Kelley for Headquarters SC

Revise paragraph to read:

Paragraph 4a(3). EA must use a formal documented process to manage and conduct Independent Oversight appraisals that is published and accessible to DOE employees ~~(see the Independent Oversight Appraisal Process Protocols available at <http://energy.gov/ea/services/assessments>)~~. This required documented process is available on the *Independent Oversight Appraisal Process Protocols* web site at <http://energy.gov/ea/services/assessments>.

To provide comprehensive coverage of the process protocols that are needed to implement this Order, we suggest that the *Independent Oversight Appraisal Process Protocols* document posted at <http://energy.gov/ea/services/assessments> be expanded to include a description of the process steps and expectations for interfaces with the contractors and integration with the other Federal Offices with responsibility for execution of work at the activity being reviewed or assessed.

Response:
Accept with Modifications

Suggested wording modified.

The Appraisal Process Protocols will be updated once DOE O 227.1A is issued at which time the comment on the protocols will be considered.

Suggested comment from Emily Mishoe for Headquarters NA**Included comments:****SME BURNINAG@NV.DOE.GOV**

The statement "Independent Oversight appraisals must be prioritized on areas of greatest potential risks and implemented in a manner that supports DOE line management in accomplishing its line management oversight and achieving DOE mission objectives safely and securely" implies that all areas of potential risks have been evaluated and ranked so the greatest areas can be appraised. As written, this requirement is not specific, practical, or implementable. The remainder of paragraph (4) provides good criteria for selecting areas for appraisal. Recommend rewording to, "When selecting topics to undergo Independent Oversight appraisals, prioritize areas of importance that support DOE line management in accomplishing its line management oversight and achieving DOE mission objectives safely and securely."

Response:
Reject

The sentence communicates a basic premise of the Independent Oversight Program. Risk evaluation within the Independent Oversight Program is an ongoing process.

Mark Roman for NA-70 Defense Nuclear Security

The term "nuclear project design, construction, and commissioning" has been added as a descriptor. As these activities tend to be "works in progress," clarification of the EA role is advised.

Add: The EA Director will establish and publish the qualification standards applicable to EA Appraisers.

Response:*Reject*

This addition is consistent with the responsibility assigned to EA (formerly the Office of Health, Safety, and Security) in DOE O 413.3B and the Consolidated and Further Continuing Appropriations Act, 2015.

The specific requirements pertaining to the technical qualification of EA assessors are established in office-specific internal procedures. As required, EA technical qualification programs conform to the requirements of DOE O 426.1, Federal Technical Capability.

SME elizabeth.hale@npo.doe.gov

Statement 4(6) is not a requirement. It is getting into telling the field "HOW" to do their job.

Response:*Reject*

This is not an actionable comment. The statement that EA will encourage line managers to observe appraisals was added to the directive based on comments from a senior executive working group that reviewed this directive.

Major comment from PK Niyogi for Headquarters NE

Page 3, Section 4 a. (4): Appraisals of "nuclear project design, construction and commissioning" was added to EA Oversight activities. It is unclear what role and benefit the evaluation of projects by EA will provide the Department that current processes (DOE Order 413, CRAs, RAs, IPTs, etc..) and other oversight organizations (OECM, DNFSB) do not already provide. I recommend defining the role/subject areas of projects that will be reviewed and scope of oversight activities, conducting a cost/schedule analysis to understand the impact such reviews will have on projects and the added benefit to the Department or removing the term.

Page 3, Section 4 a. (4): DOE systems, and assets that are critical infrastructure as defined by Presidential Policy Directive/PPD-21, Critical Infrastructure Security and Resilience was added to EA Oversight activities. Based on the removal of BPA from the exclusion portion of the applicability section, it appears this addition is directed at the Power Administrations, however the addition of this statement would subject multiple facilities and systems within the Department to inspections and standards of performance which are not supported by current Department orders (specifically physical protection requirements). PDD-21 defines the term "critical infrastructure" as systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters. I recommend the Department determine expectations with respect to what assets/systems qualify as critical infrastructure, define the performance criteria for these assets and then include this in the EA oversight program. If this statement is meant to apply to specific assets not previously covered by the order it should specifically define those assets.

Page 3, Section 4 a. (4): The sentence "Other areas of consideration for Independent Oversight appraisals are organizations whose performance may present significant risk (e.g., less than expected safety or security performance records and/or serious or recurring incidents or violations of requirements)" does not clearly define what level of performance would result in significant risk. I recommend more specifically defining the criteria which would warrant the designation of significant risk and include examples of "other areas" which have not been covered previously in the paragraph.

Page 3, Section 4 a. (5): The criteria by which technical qualifications of persons who perform oversight activities is not identified. I recommend defining this criteria (from an execution standpoint it is clear a consistent criteria does not exist based on the quality range of assessors) and how selection of assessors is verified (who assesses the assessors?).

Response:*Reject*

This addition is consistent with the responsibility assigned to EA (formerly the Office of Health, Safety, and Security) in DOE O 413.3B and the Consolidated and Further Continuing Appropriations Act, 2015.

The fact that the Department has not established requirements or expectations relating to its critical infrastructure in DOE directives does not preclude EA's ability to conduct independent oversight of such assets in accordance with PDD-21. The addition of this element to 227.1A does not expand the scope of the Independent Oversight Program, which already conducts oversight of the Power Marketing Administrations. This addition provides clarification about where EA places higher priority and greater emphasis when scheduling appraisals.

EA continuously evaluates and analyzes numerous information sources to ascertain conditions and practices that may present risks to the Department that may warrant an Independent Oversight appraisal beyond those identified in this section as program priorities. It is not possible to provide a specific performance level that results in significant risk for all of the program areas that EA evaluates (e.g., safeguards and security, cyber security, emergency management, nuclear safety, industrial safety), particularly for programs (i.e., cyber security) that are required to identify and implement controls based on a "risk management approach." The Independent Oversight Program Appraisal Process Protocols and Appraisal Process Guides provide more information on how appraisal priorities are determined.

The specific requirements pertaining to the technical qualification of EA assessors are established in office-specific internal procedures. As required, EA technical qualification programs conform to the requirements of DOE O 426.1, Federal Technical Capability.

Suggested comment from Cecelia Kenney for Headquarters AU

There are a number of "will" statements in this Requirements section where the use of "shall" or "must" would be more appropriate.

Revisit the uses of "will" in the following sections: 4.a.6; 4.c.1; 4.c.2; 4.c.3; and 4.c.6. Change to "must" or "shall" as appropriate.

Response:*Accept with Modifications*

The word "will" is appropriate and was retained in 4.a.(6), 4.c.(1), and one instance of 4.c.(2) and 4.c.(6). Other instances were changed to "must" or "are."

Suggested comment from Cecelia Kenney for Headquarters AU

Underline this subsection title, "Licensed DOE Facilities or Activities" to be consistent with the other subsections.

Response:*Accept***Suggested comment from Emily Mishoe for Headquarters NA****Included comments:****Mark Roman for NA-70 Defense Nuclear Security**

Add: EA will coordinate the proposed annual appraisal schedule in advance with the respective Program Offices and Sites

Response:*Reject*

Some Independent Oversight Programs (e.g., nuclear safety) cannot establish an annual schedule because appraisals are selected, planned, and scheduled based on the current status of site activities (e.g., facility construction) so that operations or conditions most important to safety can be observed and/or evaluated. EA will continue its practice of coordinating annual appraisal schedules for those Independent Oversight areas/topics where it is feasible to do so.

Major comment from PK Niyogi for Headquarters NE

Page 4, Section 4 (c) 1: "working with Program Offices..." was changed to "take into consideration Program Office" with respect to determining appraisal schedules. This implies that there is an unwillingness to coordinate with program office and field elements with respect to appraisal scheduling. The appraisals require substantial program office and field element resource to support and it is appropriate that the schedules be jointly agreed to. I recommend reverting to the previous verbiage of "working with Program Offices and Field Elements".

Response:

Reject

The previous sentence already states that "Independent Oversight activities must be coordinated with affected DOE line management and staff offices...." Part of that coordination includes the consideration of line management assessment plans and schedules. This cannot be accomplished without working with cognizant line management organizations.

Suggested comment from Emily Mishoe for Headquarters NA

Included comments:

Mark Roman for NA-70 Defense Nuclear Security

ADD: ...and coordinate an appropriate revised scope.

Response:

Accept with Modifications

EA will coordinate with line management to accommodate any revision to the scope of an appraisal.

Major comment from PK Niyogi for Headquarters NE

Page 4, Section 4 (c) 2: States, "EA will notify the cognizant DOE line management if circumstances or conditions are identified that necessitate deviating from the documented scope of the appraisal." The criteria for what condition or circumstance would require deviating from appraisal scope is unclear which could result in inconsistent execution of appraisal activities. Additionally, this section lacks the canned statement on disagreements that cannot be resolved between the EA Office Director and Program Office must be elevated. I recommend adding program office concurrence on the appraisal scope, better defined criteria which would warrant deviating from that scope, a statement that such deviation must obtain program office concurrence and the statement on how to handle disagreements.

Response:

Accept with Modifications

Added to the end of the paragraph that EA will coordinate with line management regarding the revised scope. The appraisal plan that is issued before the appraisal identifies its scope. This section of the directive addresses situations where an unexpected issue arises during the conduct of an appraisal that warrants further evaluation. While EA will coordinate with the appropriate level of line management concerning any scope changes, it generally would not be prudent to delay or postpone ongoing appraisal activities while seeking program office concurrence on a revised scope or appraisal plan as this would extend the length of the appraisal and time for appraisal members to be on site. If a major revision to the scope of an appraisal is envisioned based on an emergent issue, this would be addressed as a separate appraisal activity.

Major comment from Emily Mishoe for Headquarters NA

Included comments:**SME Randall.Weidman@nnsa.doe.gov**

Add "Access to classified documents, data, and items may be reasonably limited, thus EA will ensure sufficient lead time to comply with applicable need-to-know access controls."

Response:*Reject*

The intent of EA issuing an appraisal plan and requiring organizations subject to appraisals to identify security requirements before the appraisal (e.g., access authorization requirements) is to ensure that EA can comply with any identified site requirements. EA is already required to and does comply with regulations and directives that govern access to classified information. Nothing in this directive is intended to circumvent or supersede those requirements.

Suggested comment from Emily Mishoe for Headquarters NA**Included comments:****Jacquelyn Silva for Sandia National Laboratories**

Per SME tmfitzg@sandia.gov:

Section 4.c.(3) of the draft order states "Upon EA request, DOE and contractor management will provide access to facilities, managers and staff, and documents or other data."

I am concerned that the term "or other data" may be intentionally ambiguous, and may take the place of, and leave open to interpretation, the phrase that was previously included in the JM revision "must have license to schedule and conduct appraisal activities and obtain access to facilities, personnel, computer networks, and information as it is deemed necessary to accomplish its mission". I would recommend that we request that "or other data" be removed from the draft new order.

Response:*Reject*

EA cannot perform its Independent Oversight function effectively without the ability to review certain data (e.g., nuclear material inventories, computer security audit logs) that is expected to be generated or maintained by contractors in support of safety or security programs. This statement is consistent with the June 27, 2014, Secretarial memorandum, which specifies "documents or other data."

Major comment from PK Niyogi for Headquarters NE

Page 5, Section 4 (c) 4: States, "EA must assure that appraisal team members have no conflict of interest or appearance of conflict of interest with subjects they review". It is unclear how this is or will be accomplished when the majority of the appraisal team members are contractor staff, some of this contractor staff hold company interest (VP) and serve as an inspections and others of which teach at NTC in the very areas they inspect (areas of which have multiple ways to accomplish the how). Also many of these individuals attend working groups and participate in policy review which are supposed to be independently assessing its adequacy. I recommend providing additional details on how the assurance will be accomplished/verified.

Response:*Reject*

EA has contracted with a company that holds no contracts with and does not support any DOE line organization or contractor that EA oversees. EA has contractually required the contractor to provide a conflict of interest management plan that addresses organizational (contractor) conflict of interest, as well as individual conflict. Individual inspectors sometimes serving as adjunct instructors at the NTC in their area of expertise in no way constitutes a conflict of interest. Such activity does not establish policy or requirements, and does not constitute a line management activity that they may oversee.

Major comment from PK Niyogi for Headquarters NE

Page 5, Section 4 (c) 5: Identifies trusted agents as "trusted agents must have the authority to make decisions regarding testing details on behalf of their facility/organization". This statement is with respect to performance testing and decision making authority on performance testing lies within the contractor performance testing manager and the ODFSA. This statement therefore excludes program office personnel from being included as trusted agents within the subject area of performance testing. I recommend including program office inclusion as a trusted agent in this subject area.

Response:

Reject

This section does not preclude the use of program office personnel as trusted agents. The designation of trusted agents occurs on a case-by-case basis for each appraisal. While the number must be kept a minimum, if a trusted agent from the program office is deemed necessary to ensure the safe, secure, and reliable execution of the performance test scenario, such a trusted agent will be designated.

Suggested comment from Emily Mishoe for Headquarters NA

Included comments:

Jacquelyn Silva for Sandia National Laboratories

Per SME tmfitzg@sandia.gov:

Section 4.c.(6) of the draft order opens the door to unannounced appraisals. I believe that this caveat is new to this this draft order. I fear that allowing EA to show up at a site to perform "unannounced appraisals" with open " access to facilities, managers and staff, and documents or other data" gives them unfettered access and authority at all sites. While Sandia, and other sites, believe in the merits of transparency, I am concerned that giving EA this level of authority may lead to unintended consequences.

Response:

Reject

Unannounced appraisals have been a standard practice of the Independent Oversight Program for many years and are an industry standard practice for areas that EA evaluates (i.e., cyber security). In fact, NNSA requested and has an agreement with EA to conduct certain unannounced testing to fulfill a statutory mandate, and former Secretary of Energy Steven Chu required HSS (now EA) to develop a no-notice performance testing program to enhance DOE's ability to provide for more realistic assessments of site security readiness capabilities.

Mark Roman for NA-70 Defense Nuclear Security

EA should identify indicators/factors which contribute to a determination for an unannounced appraisal

Response:

Reject

EA conducts several types of unannounced appraisals, some of which are performed routinely while others are selected based on current events or conditions. Identifying the factors that contribute to the selection of all of the various types of appraisals is not appropriate for an order. See the Independent Oversight Appraisal Process Guides for more information about these activities.

Major comment from PK Niyogi for Headquarters NE

Page 5, Section 4 (c) 6: States "Where EA determines that unannounced appraisals are necessary to evaluate safety and security performance..." Limited Notice Performance Testing has become a norm within the appraisal arena. I recommend removing the vagueness of "EA can determine" and replacing it with the circumstances under which LNPT will be utilized.

Response:

Reject

EA routinely conducts several other types of unannounced appraisals besides LNPTs, particularly in the cyber security arena, where unannounced performance testing is industry standard practice. Describing the circumstances under

which EA conducts all of the different types of unannounced activities is not appropriate for an order. See the Independent Oversight Appraisal Process Guides for more information about these activities.

Suggested comment from Cecelia Kenney for Headquarters AU

Conduct of Appraisals, paragraph 4.d.(4) requires coordination with affected DOE elements prior to briefing others and the affected DOE organizations and the Departmental Representative before briefing the DNFSB. The last sentence of this paragraph indicates the Secretarial Officer and the FEM must be offered the opportunity to address appraisal outcomes. It is unclear if this is specific to the DNFSB briefing or to all briefings and if "address the appraisal outcomes" means to be present at the subject briefings or to provide something in writing for the briefings or both. Also, it is suggested that the Secretarial Officer (or field element) be provided the opportunity to add a "management comment" to the appraisal report similar to the IG and GAO process. Last sentence should be rewritten to clarify its intent and scope.

Response:

Accept with Modifications

Modified the last sentence of 4.d.(4) to indicate that the opportunity applies to all briefings and may occur either verbally or in writing.

Added a new paragraph: For major Independent Oversight appraisals (e.g., multi-topic inspections), EA must provide the cognizant Program Secretarial Officer the opportunity to submit a written management response to the conclusions and any recommendations included in the final draft appraisal report. If provided, EA will reflect this response in an appendix to the final appraisal report.

A definition for recommendations has also been added to the order.

Suggested comment from Emily Mishoe for Headquarters NA

Included comments:

SME BURNINAG@NV.DOE.GOV

The statement, "EA must document all of its Independent Oversight appraisal activities." is overly broad. The remainder of the paragraph provides clear guidance on which activities need to be documented. Documenting "all" activities may include irrelevant topics such as meeting logistics, working notes, working checklists, or travel coordination. Delete the first sentence as it is not specific, achievable, or practical. Ensure those minimum activities that need to be documented are listed in the remainder of the paragraph.

Response:

Accept with Modifications

Removed the word "activities" from first sentence.

Major comment from PK Niyogi for Headquarters NE

Page 6, Section 4 (d) 2: The difference between deficiencies and findings is unclear. All cited deficiencies or findings should reference a DOE requirement, not just findings. It is unclear how OFIs are based on "fact"/order requirement as opposed to assessor opinion on how to implement orders which is the purview of the DOE contractor at the direction of the Federal Field Element and Program Office. I recommend more specifically defining a deficiency and finding and adding a statement specifying that both a finding and deficiency must reference an order requirement. I also recommend removing OFIs. Distribution of a best practices summary of how programs are implemented across the complex would provide Sites and program offices with information similar to OFIs and remove opinion from inspection reports.

Response:

Reject

There are definitions for findings and deficiencies provided in the order. These terms differentiate between items that must be addressed by line management in a corrective action plan because of their significance and items of lesser significance that line management determines how to address based on their existing issues management processes.

Opportunities for improvement are also defined in the order. These are suggested process/program improvements based on assessor experience and expertise. No action is required on the part of assessed organization regarding these items.

Suggested comment from Jennifer Kelley for Headquarters SC

Paragraph 4.d.(2). There is a great deal of long-standing confusion in the complex regarding the difference between a "Finding" and a "Deficiency". Deficiency has essentially been used to ambiguously assign lesser severity to a requirement non-

compliance, which in turn has led to confusion about how to assign importance to, and manage, correction. This confusion needs to finally be resolved with this revision by removing the term "Deficiency" from this order and from all future language. A non-compliance with a requirement is a "finding". If an identified issue is an improvement opportunity but it is **not** a non-compliance with a requirement, then it is an "Opportunity for Improvement." Everything else is a "best practice", though for consistency within the complex, "Noteworthy Practice" would be a better term.

Removing this term from this order and from all future DOE/EA audits/appraisals/assessments will greatly improve consistency of assessment and issues management across the complex.

Response:

Reject

There are definitions for findings and deficiencies provided in the order. These terms differentiate between items that must be addressed by line management in corrective action plan because of their significance and items of lesser significance that line management determines how to address based on their existing issues management processes.

Major comment from Cecelia Kenney for Headquarters AU

Add the following sentence in between the penultimate and the last sentence of that paragraph, "Disagreements concerning requirements interpretations must be raised to the cognizant OPI for an authoritative determination in writing."

Response:

Reject

This paragraph is describing the elements of appraisal reports. EA has modified other, more appropriate areas of the order in response to AU comments to address disagreements about the application of requirements and issuance of formal interpretations.

Suggested comment from Emily Mishoe for Headquarters NA

Included comments:

SME patrick.rhoads@nnsa.doe.gov

Change to "must be presented to the cognizant . . . activity for verification." This makes the sentence actually state what is intended.

Response:

Reject

EA intends for the cognizant line management to verify the factual accuracy of the appraisal results, not just receive a copy of those results for verification (passive action).

Major comment from PK Niyogi for Headquarters NE

Page 6, Section 4 (d) 3: Factual accuracy should include both site contractor and federal personnel as well as the program office. Recommend changing "cognizant DOE management " to cognizant DOE Field Element and Headquarters Program Office".

Response:

Accept with Modifications

The organizations included in factual accuracy reviews depend upon the type of appraisal conducted and are determined on a case-by-case basis. For example, small scale appraisals that are documented in Operational Awareness Records do not necessarily warrant program office review for factual accuracy. The paragraph has been modified to indicate that the cognizant Program Office will be included in the factual accuracy review of EA's larger scope appraisals.

Major comment from Cecelia Kenney for Headquarters AU

Modify the last sentence of the existing paragraph to read as follows: "Disagreements regarding the factual accuracy of the appraisal results or findings that cannot be resolved between the cognizant EA Office Director and the cognizant manager must be elevated through organizational management levels up to and including the Deputy Secretary for resolution and must take into consideration the interpretation of the requirements issued by the cognizant OPI for the directive.

Response:*Accept with Modifications*

Modified the suggested wording. Not all factual accuracy disagreements will necessarily involve policy issues.

Suggested comment from Emily Mishoe for Headquarters NA**Included comments:****Henry Van Dyke for NA-General Counsel**

- (2) When notified of either of the above conditions, cognizant DOE management must take actions to mitigate the short and long-term risk, and must notify the Program Secretarial Officer and EA within 10 working days of actions taken and any compensatory measures planned.
- (3) If the cognizant DOE management disagrees with EA's characterization of the severity of the identified condition or the need for prompt action, this must immediately be brought to the attention of the Program Secretarial Officer or **NNSA Administrator or Under Secretary as applicable**, and EA Director for resolution.

Delete the highlighted, as they are already included as Program Secretarial Officers.

Response:*Accept with Modifications*

Removed NNSA Administrator but retained Program Secretarial Officer and Under Secretary.

Major comment from Cecelia Kenney for Headquarters AU

Add "the OPI with cognizance for that subject area as follows for 4 e (3): "If the cognizant DOE management disagrees with EA's characterization of the severity of the identified condition or the need for prompt action, this must immediately be brought to the attention of the following for resolution: Program Secretarial Officer or NNSA Administrator or Under Secretary as applicable, EA Director, and the Directive's OPI with cognizance for the subject area.

Response:*Reject*

Actions to address imminent danger or a major vulnerability are the responsibility of line management and are associated with failures to implement requirements, not policy issues. If a policy issue arises, the OPI will be consulted, but it is not appropriate to notify the OPI in every circumstance where there is a disagreement on the severity of an identified condition that invokes the requirements of this section.

Major comment from Jennifer Kelley for Headquarters SC

Paragraphs 4a(1), 4f(1), 5e(3), 6, and Attachment 1 Paragraph 5. Add the following reference to Paragraphs 4a(1), 4f(1), 5e(3), 6, and Attachment 1 Paragraph 5 of the Order: Memorandum from G.J. Malosh to W.F. Brinkman, dated May 6, 2010, SUBJECT: Approval of Equivalency for Department of Energy Order 226.1A, *Implementation of Department of Energy Oversight Policy Contractor Requirements Document*.

Response:*Reject*

References to specific versions of directives have been removed from this order. It is not appropriate to include program-specific memoranda for all Departmental elements subject to the Independent Oversight Program described in this order.

Major comment from Bud Danielson for Headquarters CTA

Add 10 CFFR 830 for managing quality problems affecting nuclear facilities.

"Cognizant DOE managers must use site- and program-specific issues management processes and systems developed in accordance with DOE O 226.1B **and O 414.1D** to manage and approve these corrective action plans and track them to completion. For findings and corrective actions pertaining to safeguards and security (excluding cyber security) activities, the DOE Safeguards and Security Information Management System (SSIMS) must be used for this purpose (reference DOE O

470.4B, *Safeguards and Security Program*). Other deficiencies identified in appraisal reports must be managed in accordance with DOE O 226.1B processes and Quality Assurance Programs established to meet the requirements of DOE O 414.1D, *Quality Assurance* **and 10 CFR 830 for deficiencies affecting nuclear safety"**

Response:

Accept with Modifications

Reference to 10 CFR 830 added. Earlier reference to DOE O 414.1D was not added. The specific reference only to DOE O 226.1 is intentional because that directive specifically addresses the management of "findings."

Suggested comment from Emily Mishoe for Headquarters NA

Included comments:

Mark Roman for NA-70 Defense Nuclear Security

Delete: "At the discretion of the EA Director" as this action inappropriately places EA in the line management construct.

Response:

Reject

The act of providing feedback on a corrective action plan does not usurp line management's responsibility and authority for developing, approving, and implementing corrective actions. Line management's responsibility and authority for doing so is conveyed in the previous section (4.f.(1)).

Major comment from PK Niyogi for Headquarters NE

Page 6, Section 4 (f) 2: States that "At the discretion of the EA Director, or when requested by the cognizant DOE manager, EA must review the adequacy of proposed corrective action plans developed in response to appraisal results and provide comments for consideration." This requirement implies EA will now have the authority to approve corrective action plans which is an extension of authority previously held by Field Elements and Program Offices (with respect to inspections - if this statement is aimed at Enforcement Activities, the rules of engagement for Enforcement and Inspection are different and as such should be separated within this order to avoid confusion and/or broad statements). Corrective Action Plans that address weaknesses in security programs is a line management function (Site and Program Office). EA has the ability to assess corrective actions in follow-up inspections which is appropriate. As written this statement is in direct conflict with EA's stated purpose of independent assessment. I recommend removing "At the discretion of EA" and specifying EA's authority to evaluate corrective actions is through the official appraisal process.

Response:

Reject

Section 4.f.(1) identifies that line organizations must approve corrective action plans in accordance with their established processes. This paragraph (4.f.(2)) indicates that EA may provide comments; it does not establish or imply any EA approval authority. This directive only addresses EA Independent Oversight activities. It does not address any aspect of the Enforcement Program, which is governed and administered by Federal statute and regulation, not DOE directives.

Suggested comment from Emily Mishoe for Headquarters NA

Included comments:

Mark Roman for NA-70 Defense Nuclear Security

Revise to read: Cognizant DOE managers must provide EA with information on corrective actions related to prior appraisals of their organization, sites, and/or contractor activities, when requested, solely for purposes of subsequent appraisal evaluation.

Response:

Reject

Change has been made to clarify that this requirement applies to prior Independent Oversight appraisals. This item was not modified to require that the provision of such information be associated with a subsequent appraisal. The Independent Oversight Program has a duty to know whether identified issues are being addressed. If such issues are being addressed effectively, this may preclude the need for a subsequent appraisal.

Major comment from PK Niyogi for Headquarters NE

Page 6, Section 4, (f) 4: States "Cognizant DOE managers must provide EA with information on corrective actions related to appraisals of their organization, sites, and/or contractor activities when requested." This requirement is not associated with an appraisal activity, announced or otherwise, and implies Field Elements and Program Offices will be required to provide information at discretion of EA outside of an official appraisal. It is unclear why EA would need to request such information outside the scope of an appraisal. I recommend removing the statement or specifying it to be specific to the scope of an appraisal.

Page 6, Section 4, (f) 5 once again asserts that EA is a deciding authority with regards to the adequacy, timeliness and effectiveness of site and program office corrective action plans. Agree this appears to be over-reaching and infers EA has the last word in re approval/disapproval – usurps local authority/responsibility.

Response:

Reject

Change has been made to clarify that this requirement applies to prior EA appraisals. This item was not modified to require that the provision of such information be associated with a subsequent appraisal. The Independent Oversight Program has a duty to know whether issues it has identified are being addressed. If such issues are being addressed effectively, this may preclude the need for a subsequent appraisal.

Nothing in this directive provides EA with responsibility or authority for approving corrective action plans. As part of its Independent Oversight function, EA will evaluate whether identified issues are being addressed effectively. If line management has a substantive disagreement with EA's characterization at any time that cannot be resolved at lower levels of the organization, the issue will be elevated in the management chain to attempt to achieve resolution.

Suggested comment from Cecelia Kenney for Headquarters AU

Paragraph 4.f.(4) states that DOE managers must provide, to EA, information on corrective actions related to appraisals done on the receiving DOE organization. Suggest the Order clarify who did the appraisal, i.e., EA or any other organizations such as the program office, site office, IG, etc. or use the term "all". Also, clarify (as appropriate) when the term appraisal is used throughout the document, whether it deals with the EA appraisal, or another office's appraisal. For example in 5 a.(2), is this referring to all appraisals or just the EA appraisals? The appropriate qualifier should be included in front of the word "appraisal", e.g., "Independent Oversight" or "all".

Response:

Accept

Clarified to identify that the requirement relates to prior Independent Oversight appraisals. Some clarifications have also been made to other uses of the word "appraisal" in this directive although the definition of appraisal in appendix 1 clearly identifies that this term refers to an EA Independent Oversight activity when used in this order.

5. RESPONSIBILITIES

Suggested comment from Emily Mishoe for Headquarters NA

Included comments:

Mark Roman for NA-70 Defense Nuclear Security

5.b.4: The distribution of appraisal reports should be coordinated with and approved by the Program Office of the activity appraised.

Response:
Reject

It is EA's responsibility to determine the distribution of products that it generates. Line management can determine any subsequent distribution that may be needed within its own organization.

Suggested comment from Steven Petras for HSS-DR-DNFSB

DNFSB Staff comment for 5.c.(4)

[C] This paragraph regarding office director responsibilities states, "...notify the applicable OPI [Office of Primary Interest] when findings or deficiencies relating to DOE policy are identified during appraisals." This paragraph does not specifically address DOE directives, which are a primary concern of OPIs (note the title of section 5.h.).

[S] Revise this paragraph to address DOE directives. Suggested wording includes: "...relating to DOE policy or DOE directives..."

Response:
Accept

Suggested comment from Cecelia Kenney for Headquarters AU

Modify the 5 c (3) to call out who has the responsibility to notify the cognizant Directive's OPI that an authoritative interpretation of directives requirements is needed.

Response:
Reject

However, 5.h.(3) has been modified to indicate that either EA or the line organization subject to an appraisal may submit a request to the OPI for formal interpretation of a directive requirement.

Suggested comment from Emily Mishoe for Headquarters NA

Included comments:

Mark Roman for NA-70 Defense Nuclear Security

5.d.1: ADD: conducts annual appraisals of compliance to the Homeland Security Presidential Directive -12 requirements.

Response:
Reject

Lines of inquiry related to HSPD-12 implementation may be included in appraisals but this is not a specific responsibility assigned to EA in DOE O 206.2, *Identity, Credential, and Access Management*, or a focus area for the Independent Oversight Program.

Major comment from Jennifer Kelley for Headquarters SC

Paragraphs 4a(1), 4f(1), 5e(3), 6, and Attachment 1 Paragraph 5. Add the following reference to Paragraphs 4a(1), 4f(1), 5e(3), 6, and Attachment 1 Paragraph 5 of the Order: Memorandum from G.J. Malosh to W.F. Brinkman, dated May 6, 2010, SUBJECT: Approval of Equivalency for Department of Energy Order 226.1A, *Implementation of Department of Energy Oversight Policy Contractor Requirements Document*.

Response:
Reject

See responses to prior identical comment.

Suggested comment from Steven Petras for HSS-DR-DNFSB

DNFSB Staff comment for 5.h.(2)

[C] This paragraph regarding OPI responsibilities states, "...track to completion corrective actions for Independent Oversight findings related to policies or activities of the OPI." This paragraph does not clearly address DOE policies or directives.

[S] Revise this paragraph to clearly address DOE policies directives. Suggested wording includes: "...related to DOE policies, DOE directives, or activities of the OPI."

Response:

Accept

Major comment from Cecelia Kenney for Headquarters AU

Modify the existing paragraph to read, "Provide clarification regarding requirements contained in DOE directives under their cognizance and issue authoritative interpretations in writing when necessary to document this interpretation."

Response:

Accept with Modifications

Change expanded to indicate that a request for an authoritative interpretation may come from EA or a line organization.

6-8. REFERENCES; DEFINITIONS; CONTACT

Suggested comment from Emily Mishoe for Headquarters NA

Included comments:

SME BURNINAG@NV.DOE.GOV

The reference section does not include multiple other references cited in the Order. For example: Executive Orders 12333 and 12344, 48 CFR Sections 952 and 970, and 50 USC Sections 2406 and 2511. Ensure all applicable references are included in Section 6.

Response:

Reject

References pertaining to boilerplate directive applicability language not added to directive. All references used in the requirements section of the order are reflected in this section.

Major comment from Jennifer Kelley for Headquarters SC

Paragraphs 4a(1), 4f(1), 5e(3), 6, and Attachment 1 Paragraph 5. Add the following reference to Paragraphs 4a(1), 4f(1), 5e(3), 6, and Attachment 1 Paragraph 5 of the Order: Memorandum from G.J. Malosh to W.F. Brinkman, dated May 6, 2010, SUBJECT: Approval of Equivalency for Department of Energy Order 226.1A, *Implementation of Department of Energy Oversight Policy Contractor Requirements Document*.

Response:

Reject

See responses to prior identical comment.

APPENDIX A. DEFINITIONS

Suggested comment from Emily Mishoe for Headquarters NA

Included comments:

SME john.mitsunaga@nnsa.doe.gov

Recent EA reviews included the term "Issue" as an observed condition somewhat in between a finding and a opportunity for improvement. If that term continues to be used to identify lesser deficiencies it should be defined in this section.

Response:

Reject

The term “issue” will no longer be used in reports.

Suggested comment from Emily Mishoe for Headquarters NA

Included comments:

SME john.mitsunaga@nnsa.doe.gov

Recent EA reviews implemented "Limited Notice Performance Testing (LNPT)". This should be included in definitions and further discussed in the order.

Response:

Reject

LNPTs are one of several types of performance tests conducted by the Independent Oversight Program. A definition for Performance Testing has been added to this revision of the directive to cover all types of performance tests that EA conducts. LNPTs are addressed in EA's Limited-Notice Performance Test Inspector's Guide.

Major comment from Cecelia Kenney for Headquarters AU

The definition for Policy states “***Policy:*** The term "DOE policy" or "policy" when used in lower case in this Order is meant to be all inclusive of documents describing the philosophies, fundamental values, administration, requirements, and expectations for operation of the Department. It includes but is not limited to DOE Policies issued under DOE O 251.1C.”

In the second sentence, add “and other types of Directives” after “DOE Policies”. This addition would make this sentence more in line with the first sentence of the definition.

Response:

Accept

ATTACHMENT 1. CONTRACTOR REQUIREMENTS DOCUMENT

Suggested comment from Emily Mishoe for Headquarters NA

Included comments:

SME PRESTRJH@NV.DOE.GOV

The intent of this requirement is unclear. A controlled document typically includes assigning a document number and issuing the controlled copy to an individual or group of individuals. Controlled documents also imply some form of life cycle management from creation through cancellation and destruction. This seems unnecessary for a draft document. I would recommend deleting this requirement altogether as controlling a draft is inherently understood as part of the factual accuracy review discussed in requirement 3.

Response:

Accept with Modifications

Verbiage has been modified to clarify intent.

Suggested comment from Jennifer Kelley for Headquarters SC

Paragraph 4. We don't understand this requirement and request that it be clarified. Contractor personnel should not be controlling draft appraisal reports for DOE-led appraisals.

Response:

Accept

Verbiage has been modified to clarify intent.

Suggested comment from Emily Mishoe for Headquarters NA

Included comments:

SME PRESTRJH@NV.DOE.GOV

Requirement 5 seems oddly structured. The first sentence clearly defines the expectations for Findings identified in the appraisal reports. However, the second sentence implies that the appraisal reports will identify deficiencies that will not be categorized as Findings and that these deficiencies will be managed in accordance with established issues management systems. Since DOE O 226.1B and DOE O 414.1D already establish expectations for issues management systems to prepare, implement, and track to completion corrective actions to address issues, this second sentence practically says the same as the first. I'd recommend combining the two sentences to something similar to the following:

The contractor must prepare, implement, and track to completion corrective actions to address findings and other issues identified in EA appraisal reports, in accordance with established issues management systems (DOE O 226.1B) and quality assurance programs (DOE O 414.1D).

Response:

Reject

The terms “findings” and “deficiencies” are intended to differentiate between items that must be addressed by line management in a corrective action plan because of their significance and items of lesser significance that line management determines how to address based on their existing issues management processes.

Mark Roman for NA-70 Defense Nuclear Security

Add another section - (7) in the attachment with the following:

ADD: The contractor shall comply with agency personal identity verification procedures in the contract that implement Homeland Security Presidential Directive -12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24 and Federal Information Processing Standards Publication (FIPS PUB) Number 201

Response:

Reject

These requirements are covered in DOE O 206.2, *Identity, Credential, and Access Management*, and are not pertinent to implementing the Independent Oversight Program.

Major comment from Jennifer Kelley for Headquarters SC

Paragraphs 4a(1), 4f(1), 5e(3), 6, and Attachment 1 Paragraph 5. Add the following reference to Paragraphs 4a(1), 4f(1), 5e(3), 6, and Attachment 1 Paragraph 5 of the Order: Memorandum from G.J. Malosh to W.F. Brinkman, dated May 6, 2010, SUBJECT: Approval of Equivalency for Department of Energy Order 226.1A, *Implementation of Department of Energy Oversight Policy Contractor Requirements Document*.

Response:

Reject

See responses to prior identical comment.

Corrective action plans (as discussed throughout this Order) should be developed and implemented in accordance with requirements in the contract (which may or may not include DOE O 226.1B and/or DOE O 470.4B etc.). See comment regarding Paragraphs 4a(1), 4f(1), 5e(3), 6, and Attachment 1 Paragraph 5 of the Order, which would also fix the issue noted here.

Response:

Accept with Modifications

References to specific versions of directives have been eliminated. See also responses to prior identical comment.

FOOTNOTES